

MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION AND
TO ALLOW LATE FILING OF APPEAL
ON GROUNDS OF EXCUSABLE NEGLIGENCE
(Fed. R. Bankr. P. 8002e)

Francis Lafayette filed a notice of appeal on June 24, 2004 four days past the deadline. On June 30, 2004 the Court entered an order dismissing the appeal as untimely.

On May 3, 2003 Francis Lafayette was hospitalized at the Wing Memorial Hospital, Palmer, MA with in a critical diabetic condition. This required constant transfusions of insulin. Upon release from the hospital medication was prescribed by Francis Lafayette, attending physical which was suppose to control the diabetic condition. Following the admission Francis Lafayette faithfully took the prescribed medication, however, on June 24, 2004 Francis Lafayette's attending physician doubled the strength

On June 3, 2004 a second medical doctor gave diagnosis of Francis Lafayette concerning another medical matter as "polymyoneuropathy" and that this condition causes Francis Lafayette to unable to walk 200 feet without assistance. See Attached Exhibit "B".


During the time period of the entry of the order which was June 10, 2004 to the date of the filing of the appeal June 24, 2004, Francis Lafayette was placed on an incorrect dosage of medication which was not sufficient to override the effects of diabetes. As a result Francis Lafayette was very ill with uncontrolled blood sugar and as a further result of the both illnesses Francis Lafayette did not file the appeal timely.

Francis Lafayette respectfully requests the Court to apply the doctrine of excusable neglect. The Bankruptcy Court should evaluate Francis Lafayette's conduct against several factors, including: (1) whether granting the delay will prejudice the

appeal; (2) the length of the four (4) day delay and its impact on efficient court administration; (3) whether the delay was beyond the reasonable control of the person whose duty it was to perform; (4) whether the person appealing acted in good faith and whether the failure to timely file the appeal resulted from negligence, indifference or culpable conduct.

Francis Lafayette's failure to timely file the appeal resulted from unanticipated illness which an insufficient medication was prescribed.

Respectfully


Francis Lafayette, J. D.
1024 Park Street
Post Office Box 1020
Palmer, MA 01069
(413) 283-7785

Certificate of Service

I, Francis Lafayette certify that I caused a copy of the foregoing pleading to be served upon the parties shown below by mailing a copy of the same, postage prepaid, first class mail to:

Denise M. Pappalardo
Chapter 13 Trustee
Denholm Building
P. O. Box 1607
Worcester, MA 01601

UNITED STATES TRUSTEE
446 Main Street
14th Floor
WORCESTER, MA 01608

Joseph L. LaFrance
60 Sayles Street
Southbridge, MA 01550


Francis Lafayette, J. D.

EXHIBIT "A"



Wing Memorial
Hospital and Medical Centers
A Member of
UMass Memorial Health Care

FOLLOW UP TO YOUR RECENT DIAGNOSTIC TESTS OR RECENT PROCEDURE(S)

DATE: 6-24-04

PATIENT: Francis Lafayette

MR#

LAB TEST RESULTS:

X-RAY RESULTS:

MAMMOGRAM:

PAP SMEAR:

Poststate cancer screening test normal
Diabetes control: not good -
not yet surprising will
recheck in several months

BASED ON THIS INFORMATION:

- ☐ NO FURTHER TESTS ARE REQUIRED AT THIS TIME
☐ STAY ON YOUR CURRENT MEDICATION
☐ CHANGE YOUR MEDICATION AS INDICATED:

☐ ARRANGE FOR THE FOLLOWING:

SINCERELY:

Theresa Jones

MD

WING MEDICAL CENTER AT:

- | | |
|---|---|
| <input type="checkbox"/> BETHERTOWN, tel. 323-5118 fax: 323-6158 | <input type="checkbox"/> PALMER, tel. 284-5400 fax: 284-5194 |
| <input type="checkbox"/> 20 Daniel Shays Highway, Bethertown, MA 01007 | <input type="checkbox"/> 40 Wright Street, Palmer, MA 01069 |
| <input type="checkbox"/> LUDLOW, tel. 589-0583 fax: 583-5239 | <input type="checkbox"/> WILBRAHAM, tel. 596-3455 fax: 596-2961 |
| <input type="checkbox"/> 34 Hubbard Street, Ludlow, MA 01056 | <input type="checkbox"/> 2344 Boston Road, Wilbraham, MA 01095 |
| <input checked="" type="checkbox"/> MONSON, tel. 267-9101 fax: 267-4606 | <input type="checkbox"/> Grissold Center, tel. 284-5285 fax: 284-5384 |
| <input type="checkbox"/> 2 Main Street, Monson, MA 01057 | <input type="checkbox"/> 40 Wright St., Palmer, MA 01069 |

This information is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, re-transmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender.

750-1014 11/03

01027

EXHIBIT "B"

TO BE COMPLETED BY HEALTH CARE PROVIDER

CLINICAL DIAGNOSIS: polyneuropathy (Required)DURATION (circle one): Temporary Permanent
If temporary, please state # of months _____

PLEASE CHECK ALL THAT APPLY:

☒ Unable to walk 200 feet without assistance (clinical diagnosis MUST be completed)☐ Legally Blind* (Cert. Of Blindness may substitute for professional certification) (*automatic loss of license)☐ Chronic Lung DiseasePlease state FEV1 Test results _____ O2 saturation with minimal exertion _____
Use of Portable Oxygen? Yes _____ No _____☐ Cardiovascular Disease

AHA Functional Classification (circle one): I II III IV*

Arthritis (please state type, severity, and location) _____ (*automatic loss of license)

☐ Loss of or permanent loss of use of a limb
Description of functional disability _____

HEALTHCARE PROVIDER MUST CHECK ONE:

In my professional opinion and to a reasonable degree of medical certainty:

☒ The above condition, or any other medical condition of which I am aware, **WILL NOT IMPAIR** the safe operation of a motor vehicle.☐ The person applying for this permit is **NOT** medically qualified to operate a motor vehicle safely.☐ The medical condition as stated above is of such severity as to require a **COMPETENCY ROAD TEST**.

CERTIFICATION: (Please Print)

Healthcare Provider: Michael R. Sorrell, M.D.Address: 300 Church Street, Suite 2Address: Springfield, Massachusetts 01104Title: _____
Mass Board of Registration, # 06495Healthcare Provider's Signature: [Signature]Date: 6-3-04

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS


In RE: JOSEPH L. LAFRANCE Case No: 02-42450-HJB
Debtor Chapter 13

MOTION FOR RECONSIDERATION AND
TO ALLOW LATE FILING OF APPEAL
ON GROUNDS OF EXCUSABLE NEGLIGENCE
(Fed. R. Bankr. P. 8002(c))

To the Honorable Henry J. Boroff, U.S. Bankruptcy Judge:

Now comes Francis Lafayette and moves the Court to
reconsider the ORDER dated June 29, 2004 dismissing the Notice of
Appeal of the Court's order of June 10, 2004 and to allow the
filing of appeal late. Filed with this motion is a memorandum in
support of this motion which sets forth facts sufficient to allow
a late notice because of excusable neglect pursuant to Fed. R.
Bankr. P. 8002(c).

Respectfully


Francis Lafayette
BBO# 282960
Post Office Box 1020
Palmer, MA 01069
(413) 283-7785

Certificate of Service

I, Francis Lafayette, J. D., certify that I caused a copy of
the foregoing motion to be served upon the parties shown below by
mailing a copy of the same, postage prepaid, first class mail to:

Denise M. Pappalardo
Chapter 13 Trustee
Denholm Building
P. O. Box 16607
Worcester, MA 01601

UNITED STATES TRUSTEE
446 Main Street
14th Floor
WORCESTER, MA 01608

Joseph L. LaFrance
60 Sayles Street
Southbridge, MA 01550

Respectfully


Francis Lafayette, J. D.